

DATE

Ernest Mitchell
Fire Chief
Caddo Parish Fire District No. 3
P.O. Box 26
Greenwood, Louisiana 71033

Re: **Docket No. 2022-204**
Advisory Opinion

Dear Mr. Mitchell,

The Louisiana Board of Ethics, at its meeting on May 6, 2022, considered your request for an advisory opinion as to whether the Code of Governmental Ethics (“Code”) would prohibit John Prock from being appointed as a member of Board of Commissioners for the Caddo Parish Fire District No. 3.

FACTS PROVIDED

The Caddo Parish Fire District No. 3 (“Fire District”) was created by resolution of the Caddo Parish Commission and is governed by a Board of Commissioners (“Fire District Board”). The Fire District Board is comprised of five members: two members are appointed by the Caddo Parish Commission, two members are appointed by the Mayor and Board of Aldermen for the Town of Greenwood, and one member, who serves as the chairman, is selected by the other four Fire District Board members. Members serve two-year terms and receive no compensation for their services.

The First District Board will soon have a vacancy. John Prock is a possible appointee on behalf of the Town of Greenwood. Mr. Prock is the father-in-law of Jason McMullen, who has been employed as a firefighter by the Fire District for 27 years.

You ask whether John Prock may be appointed as a member of the Fire District Board by the Town of Greenwood while his son-in-law, Jason McMullen, is employed by the Fire District.

PROHIBITED TRANSACTION

La. R.S. 42:1113A No public servant ... or member of such a public servant’s immediate family ... shall enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.

La. R.S. 42:1102(2)(a) defines “agency” to mean a department, office, division, agency...or other organizational unit of a governmental entity; (vi) for public servants of political subdivisions, it shall mean the agency in which the public servant serves.

La. R.S. 42:1102(13) defines “immediate family member” to include the parents of the public servant’s spouse.

La. R.S. 42:1102(18)(a) defines “public employee” to mean anyone, whether compensated or not, who is (iii) engaged in the performance of a governmental function, or (iv) under the supervision or authority of an elected official or another employee of the governmental entity.

La. R.S. 42:1102(19) defines “public servant” to include a public employee.

La. R.S. 42:1102(23) defines “transaction involving the governmental entity” to mean any proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other such particular matter which the public servant or former public servant of the governmental entity in question knows or should know:

- (a) Is, or will be, the subject of action by the governmental entity.
- (b) Is one to which the governmental entity is or will be a party.
- (c) Is one in which the governmental entity has a direct interest. A transaction involving the agency of a governmental entity shall have the same meaning with respect to the agency.

ANALYSIS

Jason McMullen is a public servant pursuant to La. R.S. 42:1102(19) and his agency for purposes of the Code is the Fire District, pursuant to La. R.S. 42:1102(2).

John Prock, as an immediate family member of Jason McMullen, is prohibited by La. R.S. 42:1113A(1)(a) from entering into a transaction that is under the supervision or jurisdiction of the Fire District. However, since the appointment is made by the Town of Greenwood, and not the Fire District Board, any such appointment is not a prohibited transaction under the jurisdiction of the Fire District.

NEPOTISM

La. R.S. 42:1119A No member of the immediate family of an agency head shall be employed in his agency.

La. R.S. 42:1102(3) defines “agency head” to include any member of a board or commission who exercises supervision over the agency.

La. R.S. 42:1102(13) defines “immediate family member” to include the public servant’s children and their spouses.

La. R.S. 42:1102(18)(a) defines “public employee” to mean anyone, whether compensated or not, who is (ii) appointed by an elected official when acting in an official capacity, and the appointment is to a post or position wherein the appointee is to serve the governmental entity or an agency thereof, either as a member of an agency, or as an employee thereof.

La. R.S. 42:1102(19) defines “public servant” to include a public employee or an elected official.

La. R.S. 42:1119C(2) provides an exception to the nepotism prohibition:

The provisions of this Section shall not prohibit the continued employment of any public employee nor shall it be construed to hinder, alter, or in any way affect normal promotional advancements for such public employee where a member of public employees' immediate family becomes the agency head of such public employee's agency, provided that such public employee has been employed in the agency for a period of at least one year prior to the member of the public employee's immediate family becoming the agency head.

ANALYSIS

John Prock would be a public employee if he is appointed to the Fire District Board by the Town of Greenwood pursuant to La. R.S. 42:1102(18)(a) and (19). His agency would be the Fire District, pursuant to La. R.S. 42:1102(2). Mr. Prock would be an “agency head” as a member of the Fire District Board, pursuant to La. R.S. 42:1102(3).

Generally, La. R.S. 42:1119A would prohibit the immediate family members of John Prock from being employed by the Fire District if he is a member of the Fire District Board.

However, since Jason McMullen has been employed continuously by the Fire District for more than one year, Mr. McMullen would not be prohibited from continuing his employment in the event his father-in-law, John Prock, is appointed by the Town of Greenwood as a member of the Fire District Board.

PROHIBITED PARTICIPATION

La. R.S. 42:1112B(1) No public servant shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any member of his immediate family has a substantial economic interest.

La. R.S. 42:1112D No appointed member of any board or commission, except as otherwise provided in R.S. 42:1120.4, shall participate or be interested in any transaction involving the agency when a violation of this Part would result.

La. R.S. 42:1120.4 If any appointed member of a board or commission in the discharge of a duty or responsibility of his office or position, would be required to vote on a matter which vote would be a violation of R.S. 42:1112, he shall recuse himself from voting. Additionally, the appointed member shall be prohibited from participating in discussion or debate concerning the matter.

La. R.S. 42:1102(21) defines “substantial economic interest” to mean an economic interest which is of greater benefit to the public servant or other person than to a general class or group of persons.

ANALYSIS

In the event John Prock is appointed as a member of the Fire District Board, he will be required to recuse himself from any discussion, debate, and vote on any transaction in which his son-in-law, Jason McMullen, has a substantial economic interest.

CONCLUSION

The Board concluded, and instructed me to inform you, that La. R.S. 42:1113B does not prohibit John Prock from being appointed by the Town of Greenwood as a member of the Fire District Board.

The Board further concluded, and instructed me to inform you, that La. R.S. 42:1119A does not prohibit the continued employment of Jason McMullen by the Fire District, in the event his father-in-law, John Prock, is appointed as a member of the Fire District Board. Mr. McMullen meets the one-year exception contained in La. R.S. 42:1119C(2).

Finally, the Board concluded, and instructed me to inform you that La. R.S. 42:1112B(1) prohibits John Prock from participating in any transaction in which his son-in-law, Jason McMullen, has a substantial economic interest. Mr. Prock shall recuse himself from any discussion, debate, and vote on any such matter pursuant to La. R.S. 42:1120.4.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Governmental Ethics. The Board issues no opinion as to past conduct and or to laws other than the Code of Governmental Ethics, the Campaign Finance Disclosure Act, the Lobbyist Disclosure Acts, and the conflict of interest provisions contained in the Louisiana Gaming Control Law.

If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

LOUISIANA BOARD OF ETHICS

David M. Bordelon
For the Board